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April 18, 2007

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, SW
Washington, DC 20054

**Re: In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas
WC Docket No. 06-172**

Dear Ms. Dortch:

Enclosed for filing in the above proceeding, please find two (2) copies of the redacted Comments of Charter Communications, Inc. which has been filed electronically.

Also enclosed is a “Stamp and Return” copy of this letter which we ask be stamped with the FCC’s date of filing and then returned to our messenger.

Thank you. If you have any questions, please call me at (202) 973-4287.

Very truly yours,

Davis Wright Tremaine LLP


K.C. Halm

Enclosures

**Before The
Federal Communications Commission
Washington D.C.**

In the Matter of
Petitions of the Verizon Telephone Companies
for Forbearance Pursuant to 47 U.S.C. §160(c)
in the Boston, New York, Philadelphia,
Pittsburgh, Providence and Virginia Beach
Metropolitan Statistical Areas

WC Docket No. 06-172

Opposition of Charter Communications, Inc.

Charter Communications, Inc. (“Charter”) respectfully submits these comments in opposition to the petitions filed by Verizon Communications, Inc. (“Verizon”) seeking forbearance from certain regulatory obligations in several major Metropolitan Statistical Areas (“MSAs”) in Verizon’s service area.¹ Charter’s comments focus on the Verizon petition seeking forbearance from its obligations in the Boston MSA, the only market (of the six in which Verizon has filed a petition for forbearance) in which Charter offers voice services in competition with Verizon.

I. INTRODUCTION

Charter is a facilities-based competitive provider, offering voice services over a hybrid fiber coaxial networks deployed and upgraded in recent years. As such, Charter offers its services over its own network, and without the use of unbundled network elements (“UNEs”), collocation, or resale of Verizon’s services. As a new entrant in the

¹ Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Boston Metropolitan Statistical Area (filed September 6, 2006) (“*Boston Petition*”) pending in WC Docket 06-172. Verizon filed nearly identical petitions seeking forbearance from its regulatory obligations in the Philadelphia, New York, Pittsburgh, Providence and Virginia Beach MSAs.

competitive voice market, Charter represents one of the emerging class of intermodal competitors who is contributing to real competition in the voice communications market. However, Verizon misrepresents Charter's emergence in this market and significantly overstates the impact of Charter's nascent voice services in the Boston market. For that reason, and to avoid any inappropriate reliance on Verizon's representations about the extent of Charter's penetration in the Boston markets, Charter submits these comments in opposition to Verizon's petition.

Charter concurs in the comments filed by the cable industry, through the National Cable and Telecommunications Association ("NCTA"), and urges the Commission to address the arguments posed therein. Charter's comments, however, are intended to rebut the evidence proffered by Verizon in its petition (and supporting declarations) concerning the scope of competition reflected by Charter's emerging competitive voice services.

Specifically, Verizon claims that Charter provides "substantial" retail-level competition to Verizon in the Boston MSA. Verizon makes these claims in conjunction with other "evidence" of the extent of competition from other facilities-based providers, wireless carriers, and over the top VoIP providers, in an effort to convince the Commission that Verizon has lost significant market share to these entities. But the Commission should not accept Verizon's broad assertions and generalizations without first examining the evident of competition in these markets. Instead the Commission should, as it has in previous forbearance proceedings, take a granular approach to its analysis of the state of competition and review the scope of competition, on a wire center by wire center basis, rather than on an MSA-wide basis.

II. DISCUSSION

In an attempt to obtain the same relief as that granted in the *Omaha Forbearance Order*,² Verizon makes much of the fact that facilities-based providers, like Charter, are now offering services in their markets. Indeed, because the decision in the *Omaha Forbearance Order* was predicated on the existence of substantial facilities-based competition from another cable voice provider, Cox Communications, Verizon makes several vague and overbroad assertions about the scope of competition offered by Charter (and other cable voice providers) in the Boston market.³ But Verizon's assertions are generalized, and fail to provide evidence of significant loss of market to Charter or other competitors.⁴

As other commenting parties have already noted, the extent of market penetration in the Omaha case was quite significant and represented serious erosion of the incumbent's subscriber base.⁵ By contrast, the Commission's most recent statistical report shows that as of January 2006, ILECs in Massachusetts held a 76% market share.⁶

² *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*").

³ See, e.g., *Boston Petition* at pages 1, 4-8, and 20-23, and in the accompanying affidavit of its witnesses at ¶¶ 7, 14-19, 22, 26, and 48.

⁴ For example, Verizon repeatedly refers to services that Charter and others "offer" in the marketplace, see, e.g., *Boston Petition* at 1, 2, 4-5, without focusing on the important difference between where a competitor "offers" service versus what proportion of potential customers actually *take* service from entities other than Verizon.

⁵ See Comments of Comcast Communications, Inc., Docket 06-172, at p. 3 (filed March 5, 2007) (noting that it appears that Cox's share of the market in Omaha may have been at, or near, 50% of the market).

⁶ See Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (February 2007) at Table 8.6. Although Verizon is one of several ILECs in Massachusetts, it is uncontested that Verizon is the largest ILEC, and therefore represents the (note continued)...

This figure clearly demonstrates that the market penetration the Commission found in Omaha does not exist in the Boston MSA. Indeed, it is evident that competition from all competitors (not just cable voice providers) is less than half of the total penetration that the Commission found from just one competitor in Omaha. Clearly, Verizon does not face competition from Charter (or anyone else) in the Boston MSA, to the same extent faced by Qwest in Omaha. Indeed, a review of Charter's own specific subscriber count data in the communities in which it operates in the Boston MSA confirms that conclusion.

Verizon states that Charter provides service in three communities in Middlesex County, Dunstable, Pepperell and Groton.⁷ Verizon notes that in those three communities Charter passes 9000 homes. Verizon also asserts that Charter provides service to approximately **[Begin Proprietary] ---- [End Proprietary]** residential lines in the Boston MSA. Verizon then asserts that "[g]iven that Charter only passes a total of 9000 homes, this high [residential line count] total suggests that Charter is actually offering voice service to all the homes it passes."

Verizon's questionable inferences about the correlation between the total homes passed and Charter's total line count is perplexing. It is not at all clear how Verizon comes to the conclusion that Charter is "actually offering voice service to all the homes that it passes." In fact, that is not the case. And, as described in more detail in the following paragraph, Charter only provides voice service to approximately **[Begin**

...(note continued)

large bulk of total lines served by that class of carriers in the state.

⁷ Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competitors in the Boston Metropolitan Statistical Area, in Support of Verizon Boston Petition at 12 ("Lew/Verses/Garzillo Declaration").

⁸ *Id.* at 13.

Proprietary] ---- [End Proprietary] of the homes passed that have been upgraded for voice service.

Indeed, the evidence surrounding Charter's actual penetration belies Verizon's broader claims about the state of competition in the Boston MSA. Specifically, in the Boston MSA, Charter currently serves approximately **[Begin Proprietary] ---- [End Proprietary]** subscribers over a total of **[Begin Proprietary] ---- [End Proprietary]** residential lines in the three rate centers in which it provides voice services in the Boston MSA. Furthermore, of the total homes passed in these communities, only **[Begin Proprietary] ---- [End Proprietary]** are actually capable of receiving Charter voice services.

Compared to the number of subscribers that Charter had only two or three years ago, Charter's subscriber line counts are impressive. And they reflect a real commitment to expanding facilities-based competitive offerings in this market. But compared to the number of subscribers currently served by Verizon, Charter's total residential line count (subscriber count) numbers *do not* represent the level of competition necessary for the FCC to grant the broad, unrestrained relief sought by Verizon in its petition. Thus, it is evident that Verizon's claims of loss of market share, and the state of competition in the Boston MSA, do not match that which the Commission found to be necessary to grant relief to Qwest in Omaha.

The Commission's consideration of Verizon's request for relief must be based upon the state of the competitive market as it exists today, not what it may look like at some point in the future when competition *may* be more robust. Furthermore, Verizon obscures its continued dominance of the voice market by failing to provide competitive

data at the wire center level – as required by the *Omaha Forbearance Order*⁹ and more recent forbearance decisions.” At the same time, Verizon uses very careful language to suggest that it has presented wire-center-level data when, in fact, it has not.”

Indeed, Charter also opposes the *scope* of relief requested by Verizon in its Petition. Specifically, although Verizon has requested forbearance in the Boston MSA in a manner “that is parallel to the relief granted in the *Omaha Forbearance Order*”¹² it also asks the Commission to forbear from certain regulatory duties on an MSA-wide basis: “Verizon requests that the Commission ... forbear from loop and transport unbundling ... in the Boston MSA.”¹³

However, forbearance from unbundling obligations on an MSA-wide basis is decidedly *not* parallel to the relief granted in the *Omaha Forbearance Order*. As this Commission well knows, analysis of unbundling obligations has always occurred on a very granular level, on an individual wire center basis.

⁹ See, e.g., *Omaha Forbearance Order* at ¶ 23 (noting wire center data); ¶ 59 (granting relief with respect to only 9 specific wire centers out of 24 for which Qwest had sought relief).

¹⁰ See Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area, Memorandum Opinion and Order, WC Docket 05-281, FCC 06-188 at ¶ 14 (Jan. 30, 2007).

¹¹ As previously noted in other comments filed in this docket, Verizon offers misleading evidence by focusing on the percentage of customers “located in wire centers” where competitors offer service. That statistic is, of course, significantly distinct from data concerning the percentage of customers served by competitors in such markets. See, e.g., Boston Petition at 5-6 (emphasis added) (“cable companies in the Boston MSA collectively provide voice service to residential customers in wire centers that account for at least [propriety] percent of Verizon’s residential access lines in the MSA”). The fact that a high percentage of Verizon customers live in wire centers where cable operators have at least one customer says nothing about the degree to which cable operators have succeeded in making competitive inroads into either those wire centers or the market as a whole.

¹² Boston Petition at 29.

¹³ *Id.*

Historically, the Commission has employed different geographic market definitions to carry out the differing statutory, economic, and policy goals implicated in different proceedings.¹⁴ However, the question of whether certain network elements should be made available on an unbundled basis necessarily implicates issues of self-provisioning of those same network elements by competitors. In such cases, “the Commission has focused its analysis on wire centers,”¹⁵ rather than entire MSAs. That, of course, is the approach used by the Commission in analyzing Qwest’s unbundling obligations in the *Omaha Forbearance Order*.¹⁶ Although Qwest had sought relief on an MSA-wide basis, the Commission appropriately rejected that request as overbroad and instead considered the questions on a wire center by wire center basis.¹⁷

The Commission also used the same framework in the more recent ACS of Anchorage Forbearance proceeding. There the Commission explained that “as in the *Qwest Omaha Order*, we conclude that it is appropriate for us to use the wire center service area as the relevant geographic market.”¹⁸ Citing the varying conditions across the Anchorage study area, the Commission once again concluded that it is more

¹⁴ *Qwest Omaha Forbearance Order*, at n. 129.

¹⁵ *Id.*

¹⁶ *Id.* (citing *Triennial Review Remand Order*, 20 FCC Rcd at 2581-85, ¶¶ 79-85 (analyzing dedicated transport impairment at the “very detailed level” of specific routes between wire centers); see also *id.* at 2619-25, ¶¶ 155-65 (conducting a wire center-based impairment analysis for high capacity loops)).

¹⁷ *Id.* at n. 161 (noting that it is “consistent with the Commission’s precedent, to make findings **on a wire center basis.**”) (emphasis added).

¹⁸ *In the Matter of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, WC Docket 05-281, FCC 06-188 at ¶ 14 (Jan. 30, 2007) (“*ACS Forbearance Order*”).

“appropriate to analyze competitive conditions more granularly, by wire center service areas,”” rather than larger metropolitan service areas (or MSAs).

Thus, the standard for defining the appropriate geographic market for analyzing whether to grant the relief requested by Verizon in this case is well established. Consistent with its previous decisions on that question the Commission must focus on individual wire centers, rather than broader service areas or MSAs, when determining whether Verizon has presented sufficient evidence to conclude that each of the prongs of Section 10(a) are satisfied. It is reasonable to assume that Verizon is cognizant of this fact, particularly in light of Verizon’s exaggeration of its market share losses noted above. That, in **turn**, suggests that granular data on a wire-center basis will reflect that Verizon’s share of the market, and the extent of competitive losses to Charter and other competitors, is not as extensive as Verizon would have the Commission believe. Accordingly, to the extent that the Commission finds that Verizon is entitled to any forbearance relief in the Boston MSA – and it should not so find – that relief should be on the same granular level as that which was granted to Qwest in Omaha, and ACS in Anchorage, on a wire center basis.²⁰

III. CONCLUSION

Verizon’s petitions are based on the claim that it faces such a high level of retail competition – including competition from Charter – that, like Qwest in Omaha, it should receive relief from certain UNE obligations. The facts do not bear out Verizon’s

¹⁹ *Id.* at ¶ 16.

²⁰ Indeed, Verizon’s failure to present wire-center level data is, sufficient reason to deny Verizon’s petitions.

representations and implications about the amount of competition it faces – including competition from Charter. While Charter aspires to provide an increasing amount of facilities-based competition, its share of the residential and business markets in the subject MSAs remains small. Moreover, while relying heavily on the *Omaha Order*, it has failed to present competitive information at the wire center level which that ruling ultimately required. For all these reasons, the Commission should reject Verizon's forbearance petitions.

Respectfully submitted,

CHARTER COMMUNICATIONS, INC.

/s/

By: _____

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